

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

|                                 |   |                             |
|---------------------------------|---|-----------------------------|
| ROBERT TROY MCCLURE             | § |                             |
| VS.                             | § | CIVIL ACTION NO. 9:16-CV-53 |
| JUAN A. TORRES, <i>et al.</i> , | § |                             |

ORDER ACCEPTING THE MAGISTRATE  
JUDGE'S REPORT AND RECOMMENDATION

Plaintiff, Robert Troy McClure, an inmate formerly confined at the Michael Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se* and *in forma pauperis*, filed this civil rights complaint pursuant to 42 U.S.C. § 1983 against defendant Juan A. Torres.

The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends defendant's Amended Motion for Summary Judgment be denied in part and granted in part (docket entry no. 114). Specifically, the Magistrate Judge recommends granting the Amended Motion for Summary Judgment as to plaintiff's claim of equal protection violations and prospective injunctive relief. *Id.* In addition, the Magistrate Judge recommends denying the Amended Motion for Summary Judgment as to plaintiff's claim of retaliation. *Id.* In the Report and Recommendation, the Magistrate Judge stated that plaintiff's claim of retaliation should proceed to trial with plaintiff's claim of excessive use of force previously determined. *Id.*

The Court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, and pleadings. Plaintiff filed objections to the Report and Recommendation of United States Magistrate Judge. This requires a *de novo* review of the objections in relation to the pleadings and applicable law. *See* FED. R. CIV. P. 72(b).

After careful consideration, the court finds plaintiff's objections lacking in merit. Plaintiff's objections appear to be based on some confusion of the procedural posture of this case. On December 11, 2019, the court entered a Memorandum Opinion and Order denying defendant Torres' Motion for Summary Judgment as to plaintiff's claim of excessive use of force (docket entry no. 101). In that Memorandum Opinion and Order, the court also ordered defendant Torres to file an Amended Motion for Summary Judgment addressing plaintiff's claims of retaliation, equal protection violations and declaratory relief.<sup>1</sup> *Id.*

Defendant Torres filed the Amended Motion for Summary Judgment on January 10, 2020 (docket entry no. 104). On January 16, 2020, the Magistrate Judge held a telephonic status conference, wherein the Magistrate Judge informed plaintiff of the need for him to file a response to the Amended Motion for Summary Judgment and that once a determination was made as to the Amended Motion for Summary Judgment, the case would be set for trial. The Magistrate Judge also informed plaintiff that counsel would be appointed for plaintiff when the case was set for trial.

The parties' Notice Regarding Consent to Proceed Before U.S. Magistrate Judge were filed on January 27, 2020 and January 31, 2020, respectively. As both parties did not consent to proceed before the U.S. Magistrate Judge, this case is still pending before the court with a referral to the Magistrate Judge pursuant to 28 U.S.C. § 636.

Plaintiff then sought an extension of time to file a response to defendant's Amended Motion for Summary Judgment (docket entry no. 108) which was granted on February 18, 2020 (docket entry no. 109). The case was stayed pending plaintiff's response (docket entry no. 109). Plaintiff filed his Response on March 17, 2020, at the beginning of the COVID-19 Pandemic (docket entry no. 110). On August 19, 2020, the Magistrate Judge then denied the Amended Motion for Summary

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<sup>1</sup>Plaintiff filed a Motion for Leave to File Amended Complaint and a proposed Amended Complaint one day before defendant Torres filed his Motion for Summary Judgment (docket entry nos. 72 & 73). Plaintiff requested leave to amend again and a proposed Amended Complaint on June 17, 2019 (docket entry nos. 81 & 82). Receiving no objections from defendant Torres, the Magistrate Judge later granted leave to amend on August 6, 2019 (docket entry no. 92). Defendant Torres never sought leave to amend his Motion for Summary Judgment to address these claims. In an effort to clarify the issues for trial, the court ordered defendant Torres to file an Amended Motion for Summary Judgment within thirty days to address the claims. The Amended Motion for Summary Judgment is the subject of this Memorandum Opinion and Order.

Judgment, subject to reconsideration, once the stay was lifted (docket entry no. 111). In the latter order, the Magistrate Judge explained that the case and ruling on the Amended Motion for Summary Judgment were stayed in light of the pandemic. *Id.* An Order lifting the stay was entered on December 4, 2020 (docket entry no. 112). The Magistrate Judge then reconsidered the Amended Motion for Summary Judgment and entered the Report and Recommendation currently pending on December 21, 2020 (docket entry no. 114).

Plaintiff offers no substantive objections to the findings and recommendations of the Magistrate Judge. Plaintiff appears to complain that the merits of the Amended Motion for Summary Judgment were previously considered and the motion was denied in its totality. As outlined above, the Amended Motion for Summary Judgment was denied, but subject to reconsideration, while the case was stayed during the height of the COVID-19 Pandemic.

ORDER

Plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge is **ACCEPTED**. Plaintiff's claims of excessive use of force and retaliation will proceed to trial. Counsel will be appointed for plaintiff to represent him in trial.

So ORDERED and SIGNED, Mar 23, 2021.



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Ron Clark  
Senior Judge